**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.1

**Excise Appeal No.75666 of 2019**

(Arising out of Order-in-Appeal No.91/CE/RKL-GST/2018 dated 30.08.2018 passed by Commissioner of CGST & Central Excise, Bhubaneswar)

**M/s Kaushal Ferro Metals (P) Ltd.**
(Plot No.407,1189, Porbahal, Kundukela, Dist.-Sundergarh-768201, Odisha)

**Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise, Rourkela**
(KK-42, Civil Township,Rourkela, Odisha-769004)

**Respondent**

**APPERANCE :**

Shri Kartik Kurmy & Ms.Ritika Kurmy, both Advocates for the Appellant
Shri D.Sue, Authorised Representative for the Respondent

**CORAM:**
**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)**

# FINAL ORDER NO.75194/2026

DATE OF HEARING : 28 JANUARY 2026
DATE OF DECISION : 28 JANUARY 2026

**Per Ashok Jindal :**

The appellant is in appeal against the impugned order wherein the demand of Excise duty has been confirmed against the appellant along with equivalent amount of penalty under Section 11AC of the Central Excise Act, 1944.

2. The facts of the case are that the appellant is a manufacturer of Sponge Iron falling under S.H.7203.10.00. The basic raw material for manufacture of Sponge Iron is Iron Ore (S.H.2601), Steam Coal (S.H.2701.19.20) or Bituminous Coal (S.H.2701.12.00) is used as fuel and Dolomite (S.H.2518.10.00) or Lime Stone (S.H.2521.00) is used as fluxing Agent for desulphurization of Sponge Iron (as Iron Ore/Coal

contains Sulphur). The process of De-Sulpharisation improves the quality of Sponge Iron.

2.1 For manufacture of Sponge Iron, they use Iron Ore as their basic raw materials. It is further stated that Coal is used as fuel and Dolomite is used as a fluxing Agent (clearing Agent) for desulphurization of sulphar in Iron Ore/Coal.

2.2 In the process of manufacture of Sponge Iron, Coal Ashes, Char (burnt remains of Coal), devolatilized Dolomite, Iron particles etc. are generated which is nothing but 'waste' which is also known as 'Dolochar' in the trade and it has no primary use.

2.3 The 'Dolochar' generated in the process of manufacture of Sponge Iron are in the nature of unavoidable/ inevitable waste which fetches some price when sold out in the market.

2.4 During the period 2014-15 they sold 32432.760 MT of 'Dolochar' at the value of Rs.27,91,966/- @ Rs.86/- per Metric Tonne (i.e 9 paise per Kilograms) and duly accounted for the sale of said 'Dolochar' in their regular books of accounts.

2.5 On the basis of EA 2000 Audit, a Show Cause Notice dated 04-01-2016 was issued by Ld. Asst. Commissioner requiring them to show cause as to why Central Excise Duty of Rs.1,72,543/- should not be proposed on them on removal of 'Dolochar' under Sec.11A(4) along with interest U/s 11AA of the said Act and why penalty U/s 11AC of the Act should not be proposed to be imposed upon them for their purported removal without payment of duty and without accounting the same in their statutory records.

2.6 The Ld. Asst.Commissioner without affording them a reasonable opportunity of being heard, passed the Order-in-Original dated 12-06-2017 and confirmed Central Excise duty demand of Rs.1,72,543/- U/s 11A(4) of the Central Excise Act, 1944, along with interest U/s 11AA of the Act and imposed equal penalty of Rs.1,72,543/- U/s 11AC of the said Act.

2.7 The appellant, being aggrieved with the said Adjudication Order, filed an appeal before the Ld. Commissioner (Appeal).

2.8 The Ld. Commissioner (Appeals) without considering the contentions of the appellant arbitrarily passed the impugned order dated 30-08-2018 and upheld the adjudication order passed by Ld. Asst. Commissioner.

2.10 Being aggrieved with the said order, the appellant is before us.

3. The ld.Cousnel for the appellant submits that the impugned Order is ex-facie, illegal and arbitrary as the 'Dolochar' is not a manufactured excisable good, hence, levy Under Section 3 of the Act is not attracted.

3.1 He further submits that 'Dolochar' is generated as inevitable 'waste' in the process of manufacture of Sponge Iron and it is not a manufactured excisable goods within the meaning of Sec-2(f) read with Sec-2(d) of the Central Excise Act, 1944, hence, the levy under Section 3 of the Act is not attracted in the instant case.

3.2 It is further submitted that the levy under the Act is on happening of the taxable event of 'manufacture' or 'production' of excisable goods and the issue in the instant case is directly covered by the following decisions of this Hon'ble Tribunal:

**(i)** M/s Alok Steel Industries Pvt. Ltd Vs. CCE reported in 2019-VIL-926-CESTAT-KOL-CE.

**(ii)** CCE Vs. M/s Jharkhand Ispat Pvt. Ltd reported in 2021-VIL-521- CESTAT-KOL-CE.

3.3 He further submitted that in the impugned Order the Ld. Commissioner (Appeal) has himself accepted that "Dolochar" is a solid fuel classifiable under SH.2701.19.90 and are partially charred coal which is used as fuel by power plants. The finding of Ld. Commissioner (Appeal) clearly shows that 'Dolochar' is nothing but Coal used as fuel by power plants.

3.4 It is his submission that even going by the finding of Ld. Commissioner (Appeal) that 'Dolochar' essentially contains partly burnt Coal used as fuel and classifiable under SH 2701.19.90, there is no emergence of a distinct commodity. What was put in the Rotary Kiln was Coal as fuel and what is generated as Dolochar is partly burnt coal used as fuel. Therefore, he submitted that the allegations/findings in the instant case are illegal, arbitrary and contrary to settled position of law and the levy of interest Under Section 11AA and imposition of penalty Under Section 11AC of the Act is wholly illegal and unwarranted.

3.5 Finally, he submitted that dispute in the instant case relates to excisability of goods and also relates to pure interpretation of law hence, levy of penalty is unwarranted and uncalled for in the facts and on the circumstances of the case. In a series of cases, it is held that levy of penalty is unwarranted where the dispute relates to pure question of law and also excisability of the goods. Therefore, the

impugned order passed by the Ld.Commissioner (Appeals) is otherwise erroneous on facts and in law and accordingly, the same be set aside.

4. The ld.A.R. for the Revenue has reiterated the findings of the Adjudicating Authority.

5. After hearing both sides, we find that the short issue emerges in this case whether in the course of manufacture of final product of Sponge Iron, dolochar which has been generated during the process, is liable to pay duty, or not ?

6. The said issue has been decided by this Tribunal in the case of M/s Alok Steel Industries Ltd. (supra), which has been followed by this Tribunal in the case M/s Jharkhand Ispat Pvt. Ltd.(supra), wherein this Tribunal has observed as under :

> *"7. We find that the only issue to be decided is whether 'dolochar', also known as 'coal char', is classifiable under chapter heading 2619 of Central Excise Tariff. We have perused the various decisions of the Tribunal relied by the appellants herein. We note that the co-ordinate Bench of the Tribunal at Bangalore in the case of CCE vs. Bellary Steels and Alloys Ltd [2017 (358) ELT 1046 (Tri-Bang)] vide final Order dated 08.05.2017 while dealing with the demand raised by the Department on dolachar under heading 2619 observed as below:-*
>
> *"4. The product in question arises in the process of manufacture of sponge iron in the rotary kiln where non-coking coal is added to the iron ore. Revenue's contention is that the impugned goods is generated as a waste containing coal char /dust/shell in the manufacturing process of sponge iron and hence it is to be rightly classifiable under 2619. It has further been contended that it is a new product which has a distinct name, character and use and is also found to be marketable.*
>
> *It is to be noted that the impugned goods are nothing but waste arising during the course of manufacture of sponge iron. In*

*the impugned order, the learned Commissioner (Appeals) has referred to the Chemical Examiner's report which indicates that the goods are predominantly comprising of coal. The use of the impugned goods is also as fuel to generate heat. For these reasons in the impugned order, the view taken is that the product is akin to coal and accordingly is to be classified under 2701.00. We find no reason to interfere with such a finding of the Commissioner (Appeals) and hence the same is upheld and the appeals filed by the Revenue are rejected."*

*We further note that the various co-ordinate Benches of the Tribunal have also held that dolochar arising in the course of sponge iron manufacture cannot be said to be manufactured product but is a waste item on which duty demand cannot be sustained. The Tribunal in Heg Ltd's case (Supra) vide Final Order dated 19.02.2016 while referring to the Supreme Court's decision in the case of Ahmedabad Electricity Co. Ltd 2003 (158) ELT 3 (SC) has held that char / dolachar is not liable to central excise duty. Similar views have been taken in the decisions relied by the appellant in the case of G.R. Sponge & Power Ltd (Supra), Jai Balaji Industries Ltd (Supra). We are therefore, of the view that the issue is no longer res integra inasmuch as the issue already stands settled in favour of the appellants.*

*In so far as the decision in the case of Reactive Metals of India Pvt Ltd (Supra), where contrary view has been taken, we find that none of the precedent decisions of the Tribunal has been referred or dealt by the Tribunal. We agree with the contention of the learned Chartered Accountant that the said decision in the case of Reactive Metals (Supra) is 'Per Incuriam' and hence cannot be relied by following the law settled by the Hon'ble Supreme Court in the State of Bihar vs. Kalika Juer alias Kalika Singh & others (2003) 5 SCC 448. The Income tax Appellate Tribunal, Kolkata Bench, in the case of ITO vs. Modern International (ITA no. 1253/Kol/2011 Final Order dated 08.02.2012) wherein the Hon'ble Tribunal observed as below:*

*"8. In the light of the views expressed by coordinate bench, with which we are in considered agreement, we decline to be guided by the decision of the coordinate bench in Lovelesh Jain (supra). We have our highest regards to the views so expressed by the coordinate bench, but quite clearly the coordinate bench was oblivious of the fact that there is already a binding judicial precedent on the issue, and as held by Hon'ble Andhra Pradesh High Court (FB) in the case of B R Constrictions (supra), a decision so rendered in "ignorance of a previous decision of its own or of a Court or co-ordinate jurisdiction which covered the case before it" lacks binding precedence value. 9. Even after this decision was pointed out, learned Departmental Representative does not give up. His next plea is that now that divergent views have been expressed by coordinate benches, the matter should at least be referred to a Special Bench. We see no legally sustainable merits in this plea either. Once we hold that Lovelesh Jain decision (supra) by the coordinate bench cannot be accorded binding precedence value, the binding judicial precedents that we have before us in favour of the assessee. In any case, we are in considered agreement with the reasoning adopted by, and conclusions arrived in, these binding judicial precedents. We, therefore, see no reasons to refer the matter to the Special Bench either."*

7. In view of the above, we hold that no duty is payable by the appellant on Dolachar emerges during the course of manufacture of sponge iron. Therefore, no duty is sustainable.

8. In view of this, we set aside the impugned demand and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

**(Ashok Jindal)**
**Member (Judicial)**

**(K.Anpazhakan)**
**Member (Technical)**

mm